

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

LULA WILLIAMS, GLORIA TURNAGE,
GEORGE HENGLE, DOWIN COFFY, and
FELIX GILLISON, JR., *on behalf of themselves*
and all individuals similarly situated,

Civil Case No. 3:17-cv-00461-REP

Plaintiffs,

v.

BIG PICTURE LOANS, LLC; MATT MARTORELLO;
ASCENSION TECHNOLOGIES, INC.;
DANIEL GRAVEL; JAMES WILLIAMS, JR.;
GERTRUDE MCGESHICK; SUSAN MCGESHICK;
and GIIWEGIIZHIGOOKWAY MARTIN,

Defendants.

_____ /

**DEFENDANT BIG PICTURE LOANS, LLC’S MOTION TO DISMISS FOR FAILURE
TO EXHAUST TRIBAL REMEDIES AND UNDER THE DOCTRINE OF *FORUM NON
CONVENIENS***

Specially Appearing Defendant¹ Big Picture Loans, LLC moves this Court under the doctrine of *forum non conveniens* for an order dismissing the Plaintiffs’ Class Action Complaint.

¹ A defendant does not submit to the jurisdiction of this Court by filing a motion to dismiss. *Hunt v. Calhoun County Bank, Inc.*, 8 F. Supp. 3d 720, 726 (E.D. Va. 2014). *See also Tomai–Minogue v. State Farm Mut. Auto. Ins. Co.*, 770 F.2d 1228, 1233 (4th Cir.1985) (recognizing that a defendant may enter a special appearance to challenge personal jurisdiction). A sovereign’s limited appearance in legal proceedings for the purpose of seeking dismissal for lack of jurisdiction does not waive any claims to sovereign immunity. *See e.g., Lac du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 327 F. Supp.2d 995, 1000 (W.D. Wis. 2004) (“[Sovereign] entities may intervene for a limited purpose such as moving to dismiss the lawsuit for failure to join an indispensable party without waiving their sovereign immunity.”); *McClendon v. U.S.*, 885 F.2d 627, 630 (9th Cir.1989) (“[T]erms of [a sovereign’s] consent to be sued in any court define that court’s jurisdiction to entertain the suit.”) (quoting *Jicarilla Apache Tribe v. Hodel*, 821 F.2d 537, 539 (10th Cir.1987) (quoting *U.S. v. Testan*, 424 U.S. 392, 399 (1976)); *cf. Richardson v. Fajardo Sugar Co.*, 241 U.S. 44, 47 (1916) (when a sovereign government has appeared, answered a

The reasons in support of this motion are set forth in the accompanying memorandum of law, which is incorporated herein by reference.

BIG PICTURE LOANS, LLC

By: /s/David N. Anthony
David N. Anthony
Virginia State Bar No. 31696
TROUTMAN SANDERS LLP
1001 Haxall Point
Richmond, Virginia 23219
Telephone: (804) 697-5410
Facsimile: (804) 698-5118
Email: david.anthony@troutmansanders.com

Karrie Sue Wichtman (admitted *pro hac vice*)
Justin A. Gray (admitted *pro hac vice*)
ROSETTE, LLP
25344 Red Arrow Highway
Mattawan, MI 49071
Telephone: (269) 283-5005
Facsimile: (517) 913-6443
Email: kwichtman@rosettelaw.com
Email: jgray@rosettelaw.com

complaint, set a trial date and defended the claim for several months, rather than merely appeared for the purposes of moving to dismiss, it has waived its right to challenge jurisdiction).

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of September, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will then send a notification of such filing (NEF) to the following:

Kristi C. Kelly
Andrew J. Guzzo
Casey S. Nash
KELLY & CRANDALL PLC
3925 Chain Bridge Road, Suite 202
Fairfax, VA 22030
Telephone: 703-424-7570
Facsimile: 703-591-0167
Email: kkelly@kellyandcrandall.com
Email: aguzzo@kellyandcrandall.com
Email: casey@kellyandcrandall.com
Counsel for Plaintiffs

James W. Speer
VIRGINIA POVERTY LAW CENTER
919 E. Main Street, Suite 610
Richmond, VA 23219
Telephone: 804-782-9430
Facsimile: 804-649-0974
Email: jay@vplc.org
Counsel for Plaintiffs

David F. Herman
Jonathan P. Boughrum
Richard L. Scheff
MONTGOMERY MCCracken WALKER
& RHOADS LLP
123 S Broad Street
Philadelphia, PA 19109
Telephone: 215-772-1500
Facsimile: 215-772-7620
Email: dherman@mmwr.com
Email: jboughrum@mmwr.com
Email: rscheff@mmwr.com
Counsel for Defendant Matt Martorello

/s/ David N. Anthony

David N. Anthony
Virginia State Bar No. 31696
Counsel for Defendants
TROUTMAN SANDERS LLP
1001 Haxall Point
Richmond, Virginia 23219
Telephone: (804) 697-5410
Facsimile: (804) 698-5118
Email: david.anthony@troutmansanders.com